IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2313 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVINDBHAI PURSHOTTAM PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2313 of 2004

MR MAHENDRA K PATEL for Petitioner No. 1

Mr. PR Abichandani, AGP for Respondent No. 1-2

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 09/02/2005

ORAL JUDGEMENT

In this petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 30th June 2003/24.7.2003 in Revision Application

No. 30/1997 in dismissing the same and confirming the order passed by the Collector, Ahmedabad dated 21.4.1997 in rejecting the application of the petitioner for converting the said land for its original use, i.e., agricultural use.

2. It appears from the record, that one Smt. Jataba Jitsanji was the owner of the land and the same was a restricted land. An application was given by the said Smt. Jataba for granting permission to sell the land in favour of the petitioner for industrial nonagricultural use. By order dated 25.1.1983 passed under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948, the Deputy Collector, Dholka, granted permission to sell the land in question to the petitioner for industrial nonagricultural use. It is the case of the petitioner that as the neighbours and some other persons objected to the use by the petitioner with regard to the land in question the petitioner could not use the land for industrial purpose for which the permission was granted and therefore the petitioner moved an appropriate application for granting permission to use it for its original purpose, i.e., agricultural use and to remove the restrictions. The said application was filed on 26.8.1996, however, the District Collector, Ahmedabad by order dated 21.4.1997 filed/rejected the said application on the ground that there is breach of condition of the original grant as well as civil suit is pending with regard to the land in question. Being aggrieved and dissatisfied with the said order dated 21.4.1997 the petitioner preferred revision application before the Secretary (Appeals) being Revision Application No. 30/97, which came to be dismissed, which has given rise to the present Special Civil Application under Article 226/227 of the Constitution of India.

3. Shri Mahendra K. Patel, learned advocate has submitted that the order passed by the District Collector, Ahmedabad, is a non-speaking order as well as the same has been passed in breach of principles of natural justice. It is submitted that in the impugned order dated 21.4.1997 the District Collector, Ahmedabad, has not stated which condition is breached by the petitioner. It is further submitted that so far as the civil suit pending in the Civil Court is concerned it has nothing to do with the permission which is sought, and it shows clear-cut non-application of mind on the part of the District Collector, Ahmedabad. It is further submitted that in fact due to filing of the suit and injunction being obtained against the petitioner the petitioner was not in position to use the land for

industrial purpose for which permission was granted by order dated 25.11.1983 and therefore it has necessitated the petitioner to move an appropriate application for conversion of the land.

4. Considering the order dated 21.4.1987, it appears that the order passed by the District Collector, Ahmedabad is in breach of principles of natural justice inasmuch as before passing the impugned order the petitioner has not been given an opportunity of being heard. Not only that in the said order dated 21.4.1987 it is stated that there is a breach of condition of the grant/order dated 25.11.1983. Nothing has been specifically mentioned in the said order as to which condition of the order dated 25.11.1983 is breached. Even it also appears from the record that pendency of the suit before the Civil Court has nothing to do with the application and permission which is sought for by the petitioner. It also appears from the record that because of injunction obtained by some other persons the petitioner could not use the said land in question for industrial purpose for which the order came to be passed on 25.11.1983 and therefore the reason submitted by the petitioner seems to be genuine. However, as nothing has been discussed by the District Collector for quashing and setting aside the order dated 21.4.1987 and so also by the Secretary (Appeals) in order dated 30.6.2003/24.7.2003 passed in Revision Application No. 30/97, the matter requires to be remanded to the District Collector, Ahmedabad, to reconsider his decision and to decide and dispose of the application submitted by the petitioner on 26.8.1996 afresh considering the observations made by me in the present order.

5. For the reasons stated hereinabove, the petition succeeds. The order passed by the Secretary (Appeals) dated 30.6.2003/24.7.2003 in Revision Application No. 30/97 as well as the order passed by the District Collector, dated 21.4.1987 are hereby quashed and set aside. The matter is remanded to the District Collector, Ahmedabad for deciding the application dated 26.8.1996 afresh in light of the observations made hereinabove and the District Collector is directed to pass an appropriate order in accordance with law and on merits as early as

possible, preferably within 3 months from the date of receipt of this order. Rule is made absolute with no order as to costs. Direct service is permitted.

[M.R. Shah, J.]

rmr.